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4 PNY TECHNOLOGIES, INC.,
5 Plaintiff,
6 v.
7 SANDISK CORPORATION,
8 Defendant.

9 Case No. [11-cv-04689-WHO](#)
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**ORDER DENYING ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

Re: Dkt. No. 173

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13 **INTRODUCTION**

14 On December 20, 2013, plaintiff PNY Technologies, Inc. (“PNY”) filed an Administrative
15 Motion to File Under Seal Portions of PNY’s Motion for Leave to Amend and Supplement Its
16 First Amended Complaint and Its Proposed Second Amended Complaint. Dkt. No. 173. PNY
17 submitted the Declaration of Robert D. Hallman in support of its motion. Dkt. No. 173-1.
18 Because the documents sought to be filed under seal contain information that defendant Sandisk
19 Corporation (“Sandisk”) considers confidential, Sandisk also submitted a declaration in support of
20 the motion. Dkt. No. 174.

21 For the reasons below, the motion is DENIED.

22 **LEGAL STANDARD**

23 Courts have long recognized a “general right to inspect and copy public records and
24 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435
25 U.S. 589, 597 & n.7 (1978). But this right is not absolute. To balance the competing interests of
26 the public’s right of inspection against litigants’ need for confidentiality, a party seeking to file
27 under seal matters related to dispositive motions must provide “compelling reasons” to do so;
28 similarly, a party seeking to file under seal matters related to non-dispositive motions must

1 provide “good cause” to do so. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th
2 Cir. 2006). Even under the laxer “good cause” standard, a party seeking to seal materials must
3 make a “particularized showing . . . with respect to any individual document” to justify its request.
4 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003). Under that standard,
5 a party that only offers “tepid and general justifications” necessarily “fail[s] to demonstrate any
6 specific prejudice or harm.” *See Kamakana*, 447 F.3d at 1186. “Broad allegations of harm,
7 unsubstantiated by specific examples or articulated reasoning,” are insufficient. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (internal quotation marks and citation
8 omitted).

DISCUSSION

11 The motion to seal is DENIED. As an initial matter, PNY has not fully complied with
12 Civil Local Rule 79-5, which governs the filing of documents under seal. It failed to (1) provide
13 an unredacted version of the documents that “indicate[s], by highlighting or other clear method,
14 the portions of the document that have been omitted from the redacted version,” CIVIL L. R. 79-
15 5(d)(1)(D); (2) provide a proposed order “which lists in table format each document or portion
16 thereof that is sought to be sealed,” CIVIL L. R. 79-5(d)(1)(B); and (3) properly mark its
17 documents according to the rule, CIVIL L. R. 79-5(d)(1)(C)–(D). This alone warrants denying the
18 motion to seal.

19 More importantly, the declarations in support of the motion from both parties are utterly
20 deficient. As the Ninth Circuit has instructed, the failure to provide specific and articulated
21 explanations of prejudice or harm is insufficient to justify filing documents under seal. In
22 addition, Civil Local Rule 79-5(d)(1)(A) states, “Reference to a stipulation or protective order that
23 allows a party to designate certain documents as confidential is not sufficient to establish that a
24 document, or portions thereof, are sealable.” For certain materials, PNY provides nothing more
25 than a bare assertion of harm, stating that the documents “contain confidential and proprietary
26 business information” and that “[o]n information and belief, PNY would likely be harmed by the
27 disclosure of such information, which includes competitively sensitive information regarding
28 pricing, costs and profit margins.” Hallman Decl. ¶ 4. For other materials, PNY justifies sealing

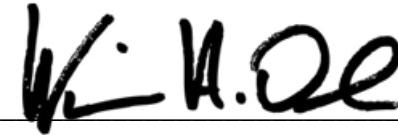
1 based solely on a confidentiality agreement between the parties themselves without explaining
2 what harm or prejudice may result from disclosure. Hallman Decl. ¶¶ 3, 5. Sandisk, on the other
3 hand, makes no attempt to explain how it will be harmed by any disclosure and instead justifies
4 sealing the materials by only referencing the stipulated protective order in this case. Such
5 declarations do not comport with Ninth Circuit law or the Court's rules requiring a particularized
6 showing of need. Without adequately explaining the basis for the motion, the motion must be
7 denied.

8 **CONCLUSION**

9 Because the parties provide nothing more than “[b]road allegations of harm,
10 unsubstantiated by specific examples or articulated reasoning” of “specific prejudice or harm” and
11 only point to the protective order to justify sealing, the motion to seal is DENIED. Any renewed
12 motion to seal must comply with Ninth Circuit law and the Court’s rules.

13 **IT IS SO ORDERED.**

14 Dated: December 31, 2013



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16 WILLIAM H. ORRICK
17 United States District Judge
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